

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

KAREN D. SMITH,

Plaintiff,

VS.

THE BANK OF NEW YORK MELLON f/k/a
BANK OF NEW YORK, AS TRUSTEE FOR
THE BENEFIT OF THE
CERTIFICATEHOLDERS OF THE CWABS,
INC. ASSET-BACKED CERTIFICATES,
SERIES 2007-SD1, and NEWREZ LLC, f/k/a
NEW PENN FINANCIAL LLC, d/b/a
SHELLPOINT MORTGAGE SERVICING,
LLC, MTC FINANCIAL INC., d/b/a
TRUSTEE CORPS, and MALCOLM &
CISNEROS, A LAW CORPORATION.

Defendants.

No.: 2:19-cv-00538-JCC

**DECLARATION OF MICHAEL S. DELEO
IN SUPPORT OF DEFENDANT MTC
FINANCIAL INC., D/B/A TRUSTEE
CORPS' MOTION FOR SUMMARY
JUDGMENT**

I, Michael S. DeLeo, hereby declare under penalty of perjury under the laws of the State of Washington as follows:

1. I am the attorney representing defendant MTC Financial, Inc., d/b/a Trustee Corps (“MTC”) in this matter. I am over the age of 18, and base this declaration on my personal knowledge and my review of my files in this matter.

DECLARATION OF MICHAEL S. DELEO IN
SUPPORT OF DEFENDANT MTC FINANCIAL
INC., D/B/A TRUSTEE CORPS' MOTION FOR
SUMMARY JUDGMENT - 1
CASE NO. 2:19-CV-00538-ICC

PETERSON RUSSELL KELLY LIVENGOOD PLLC
1850 Skyline Tower – 10900 NE Fourth Street
Bellevue, Washington 98004-8341
TELEPHONE (425) 462-4700 FAX (425) 451-0714

1 2. I was also the counsel of record for MTC in the matter of *Smith v. MTC et al.*,
 2 King County Superior Court Case No. 15-2-17623-4, which Smith filed on July 21, 2015. As
 3 counsel for MTC, I was served with, reviewed, and kept as part of my business records, the
 4 documents generated by the court or filed in court by the other parties to that case. I also
 5 regularly reviewed the publicly available docket for that case generated by the court. Attached
 6 to this Declaration as Exhibits are true and correct copies of the following documents from King
 7 County Superior Court Case No. 15-2-17623-4.

- 8 • **Exhibit 1:** The court-generated docket, as retrieved on February 26, 2021.
- 9 • **Exhibit 2:** Verified Complaint for Declaratory and Injunctive Relief, and
 Damages, filed July 21, 2015.
- 10 • **Exhibit 3:** Motion to Enjoin Trustee's Sale, filed July 22, 2015.
- 11 • **Exhibit 4:** Stipulated Motion as to Nominal Defendant MTC, filed November 4,
 2015.
- 12 • **Exhibit 5:** Order on Stipulated Motion as to Nominal Defendant MTC, filed
 November 5, 2015.
- 13 • **Exhibit 6:** Motion for Partial Summary Judgment, filed by Smith on December
 28, 2015.
- 14 • **Exhibit 7:** Defendants' Opposition to Motion for Partial Summary Judgment,
 including Defendants' Request for Judicial Notice and Declaration of Olivia
 Miller, filed by defendants BONY and Shellpoint on February 22, 2016.
- 15 • **Exhibit 8:** Stipulated Motion to Stay Proceedings to Complete Loan
 Modification Review, and Order, filed May 20, 2016.
- 16 • **Exhibit 9:** Joint Status Report, filed July 20, 2016.
- 17 • **Exhibit 10:** Order Reinstating Trial Date, filed July 22, 2016.
- 18 • **Exhibit 11:** Defendants' Motion for Summary Judgment, filed August 9, 2016.

- **Exhibit 12:** Plaintiff's Motion to Dismiss without Prejudice, filed October 10, 2016.
- **Exhibit 13:** Order Granting Plaintiff's Motion to Dismiss without Prejudice, filed October 24, 2016.

3. In the early stages of King County Case No. 15-2-17623-4, I communicated with Smith's then-counsel about MTC's intent to postpone the sale, so that no hearing on Smith's Motion to Enjoin Trustee's sale would be necessary. I also have personal knowledge that MTC twice postponed the sale. True and correct copies of MTC's two postponements of the sale are attached to this Declaration as **Exhibit 14** (postponement dated July 28, 2015) and **Exhibit 15** (postponement dated September 14, 2015). Ultimately, MTC recorded a Notice of Discontinuance for this sale on October 30, 2015. A true and correct copy of the Notice of Discontinuance recorded with the King County Recorder's Office under file number 20151030001641 is attached to this Declaration as **Exhibit 16**.

4. A true and correct copy of Plaintiff Karen Smith's ("Smith's") Request for Modification and Affidavit ("RMA") dated June 22, 2012 is attached hereto as **Exhibit 17**. This document was produced by Smith in response to discovery requests in this matter.

5. A true and correct copy of email correspondence between Smith and the Washington State Attorney General's office, regarding her June 22, 2012 RMA, is attached to this Declaration as **Exhibit 18**. This document was produced by Smith in response to discovery requests in this matter.

6. Smith also signed and submitted Uniform Borrower Assistance Forms (“UBAFs”) on or about April 23, 2014, December 23, 2016, April 10, 2017, June 30, 2017, each of which also included a hardship affidavit. True and correct copies of these UBAFs, which were produced by Smith in response to discovery requests in this matter, are attached to this Declaration as **Exhibit 19**.

1 7. MTC became the successor trustee under the Deed of Trust in this matter on
2 November 3, 2014, when an Appointment of Successor Trustee was recorded with the King
3 County Recorder's Office under file number 20141103001179. A true and correct copy of the
4 Appointment as Successor Trustee is attached to this Declaration as **Exhibit 20**.

5 8. As successor trustee, MTC recorded a Notice of Trustee's Sale with the King
6 County Recorder's Office under file number 20150331000627 on or about March 31, 2015. A
7 true and correct copy of this 2015 Notice of Trustee's Sale ("2015 NOTS") is attached to this
8 Declaration as **Exhibit 21**.

9 9. MTC recorded a Notice of Discontinuance of Trustee's Sale with the King
10 County Recorder's Office under file number 20161205000495 on or about December 5, 2016. A
11 true and correct copy of this Notice of Discontinuance is attached to this Declaration as **Exhibit**
12 **22**.

13 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE
14 OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

15 April 1, 2021, at Bellevue, WA
16 DATE AND PLACE


MICHAEL S. DELEO, WSBA # 22037

CERTIFICATE OF SERVICE

I certify that I caused to be served in the manner noted below a copy of the foregoing pleading on the following individual(s):

Christina L Henry
Henry & Degraaff, P.S.
787 Maynard Ave S
Seattle, WA 98104
Email: chenry@HDM-legal.com;
HenryDeGraaffPS@jubileebk.net; mainline@hdm-
legal.com

[] Via Facsimile
[] Via First Class Mail
[] Via Messenger
[] Via Email
[X] Via CM/ECF Electronic Notice

Arthur Ortiz
The Law Office of Arthur Ortiz
6015 California Ave SW Apt 203
Seattle, WA 98136
Email: arthur@aeolegal.com; arthur@hrmseattle.com

[] Via Facsimile
[] Via First Class Mail
[] Via Messenger
[] Via Email
[X] Via CM/ECF Electronic Notice

Donald Gene Grant
Donald G. Grant, P.S.
Washougal Town Square, Suite 245
1700 Main Street
Washougal, WA 98671
Email: don@dongrantps.com

[] Via Facsimile
[] Via First Class Mail
[] Via Messenger
[] Via Email
[X] Via CM/ECF Electronic Notice

Pavel Ekmekchyan, Pro Hac Vice
Williams Idleman, Pro Hac Vice
Yu Mohandes LLP
633 West Fifth Street, Suite 2800
Los Angeles, CA 90071
Email: pavel@yumollp.com;
widleman@yumollp.com

[] Via Facsimile
[] Via First Class Mail
[] Via Messenger
[] Via Email
[X] Via CM/ECF Electronic Notice

Lori W. Hurl
A. Grant Lingg
Forsberg & Umlauf, P.S.
901 Fifth Avenue, Suite 1400
Seattle, WA 98164
Email: glingg@foum.law;
lhurl@foum.law

[] Via Facsimile
[] Via First Class Mail
[] Via Messenger
[] Via Email
[X] Via CM/ECF Electronic Notice

DATED: April 1, 2021, at Bellevue, Washington.

By: *s/Rachel White*

Rachel White, Paralegal
Peterson Russell Kelly Livengood, PLLC
10900 NE 4th Street, Suite 1850
Bellevue, WA 98004
E-Mail: rwhite@prklaw.com

PETERSON RUSSELL KELLY LIVENGOOD PLLC
1850 Skyline Tower – 10900 NE Fourth Street
Bellevue, Washington 98004-8341
TELEPHONE (425) 462-4700 FAX (425) 451-0714

DECLARATION OF MICHAEL S. DELEO IN
SUPPORT OF DEFENDANT MTC FINANCIAL
INC., D/B/A TRUSTEE CORPS' MOTION FOR
SUMMARY JUDGMENT - 5
CASE NO. 2:19-cv-00538-JCC